UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,249	09/11/2003	James V. Candy	IL-10941	8702

24981 7590 11/15/2010

Lawrence Livermore National Security, LLC
LAWRENCE LIVERMORE NATIONAL LABORATORY
PO BOX 808, L-703
LIVERMORE, CA 94551-0808

EXAMINER	
KISH, JAMES M	

ART UNIT	PAPER NUMBER
3737	

MAIL DATE	DELIVERY MODE
11/15/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES V. CANDY and DAVID H. CHAMBERS

Appeal 2009-008828
Application 10/661,249
Technology Center 3700

Before: LINDA E. HORNER, WILLIAM F. PATE III, and STEVEN D.A. MCCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING[1]

---

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

James V. Candy et al. (Appellants) filed a request for rehearing under 37 C.F.R. § 41.52 requesting that we reconsider our decision of August 6, 2010 ("Decision").

In our Decision we affirmed the Examiner's decision to reject claims 4, 21, 41, and 61 under 35 U.S.C. § 103(a) as unpatentable over Fink and Prada, and we affirmed the Examiner's decision to reject claims 5-8, 22-25, 42-45, and 62-65 under 35 U.S.C. § 103(a) as unpatentable over Fink, Prada, and Candy. Decision 6. Additionally, the Examiner's Answer contained a new ground of rejection provisionally rejecting claims 4, 21, 41, and 61 on the ground of non-statutory, obviousness-type double patenting as being unpatentable over claims 2, 14, 29, and 44 of copending Application 11/904,823 in view of Prada. We summarily sustained this rejection because Appellants presented no arguments against it. Decision 3.

Appellants' *Request for Rehearing* makes three requests. First, Appellants request "an opportunity to file a Reply Brief responding to the Examiner's Answer's NEW GROUND(S) OF REJECTION." Req. Reh'g 2. Appellants assert this opportunity should be provided by the Board because Appellants never received the Examiner's Answer and the Examiner's Answer contained a new ground of rejection of claims 4, 21, 41, and 61. *Id.* Second, Appellants request "an opportunity to file a new Appeal Brief incorporating new arguments responding to the extensive changes in patent law and in the rules and procedures of the Board of Patent Appeal and Interferences that have taken place during the two year time period between

the August 15, 2008 Final Rejection and the August 6, 2010 DECISION OF APPEAL." Req. Reh'g 3. Third, Appellants request that the rehearing be heard by the Board en banc. Req. Reh'g 1.

ANALYSIS

We decline to grant Appellants' request to file a Reply Brief in response to the Examiner's Answer dated December 10, 2008. According to Appellants, during the week of January 25-29, 2010, Appellants discovered the Examiner's Answer while reviewing the status of appeals and then obtained a copy of the Examiner's Answer. Req. Reh'g 2. On February 2, 2010, Appellants filed a letter with the United States Patent and Trademark Office entitled "Explanation of Why a Reply Brief Was Not Filed." Misc. Incoming Letter dated Feb. 2, 2010. In this letter, Appellants state they reviewed the Examiner's Answer dated December 10, 2008, and that "Appellants' Appeal Brief is relied upon as responding to all issues in the Examiner's Answer." *Id.* This letter demonstrates Appellants' affirmative election not to file a Reply Brief, but rather to rely upon the Appeal Brief. We will not now grant Appellants' belated request to file a Reply Brief.

We also decline to grant Appellants' request to file a new Appeal Brief. Appellants' *Request for Rehearing* "must state with particularity the points believed to have been misapprehended or overlooked by the Board." 37 C.F.R. § 41.52(a)(1). Appellants assert that the patent law and the rules of procedures of the Board have changed since the drafting of Appellants' Appeal Brief; however, Appellants do not point to any specific change in the patent law or in the Board's rules and procedures that would impact the

outcome of the Board's Decision or render the Decision in error. Consequently, Appellants have failed to particularly point out how our Decision misapprehended or overlooked points due to these alleged changes in the patent law and in the Board's rules and procedures.

Appellants' request to expand the panel to be heard by the Board en banc is denied.

DECISION

The request for rehearing has been considered, but the requested relief is denied. No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

DENIED

nlk

Lawrence Livermore National Security, LLC
LAWRENCE LIVERMORE NATIONAL LABORATORY
PO BOX 808, L-703
LIVERMORE CA 94551-0808